

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.679 of 2015**

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Jagdev Das Son of Late Asharfi Das R/o Village Lakshminia, P.S. Laukahi,  
District Madhubani

.... .... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Development Department,  
Govt of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Samastipur
4. The Superintendent Engineer, Flood Control Division, Darbhanga
5. The Executive Engineer, Flood Control Division NO. 2, Jhanjharpur  
Madhubani

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Manoj Kumar Jha  
For the Respondent/s : Mr. Ravish Chandra, AC to SC-6

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**ORAL ORDER**

3      02-02-2017                      Heard Sri Manoj Kumar Jha, learned counsel for  
the petitioner and learned AC to SC-6.

The petitioner has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of India, with a prayer to quash an order, contained in Memo No.776 dated 19.05.2014 issued under the signature of the Principal Secretary, Water Resources Department, Government of Bihar. By the said order, the claim of the petitioner for grant of benefit under the Assured Career Progression Scheme ( hereinafter referred to as “A.C.P.”) has been rejected on the ground of non-passing of departmental accounts examination by the petitioner and also on



the ground of non-grant of exemption from passing departmental examination by the competent authority.

It is case of the petitioner that before attaining the age of 50 years, while functioning as a government employee, at least thrice he participated in the departmental examination, however he failed. After completion the age of 53 years, in the year 2005, the petitioner applied for exemption from passing departmental Accounts Examination before the Executive Engineer. The said application was recommended by the Executive Engineer to the Superintending Engineer, who sent the same to the Chief Engineer, Water Resources Department vide letter No.703 dated 03.10.2005. Finally, the Chief Engineer forwarded the said communication for exemption to the Commissioner, Darbhanga Division, Darbhanga (Annexure-6 to the writ petition). Thereafter, the petitioner was not communicated regarding the result of his application for exemption from passing departmental Accounts Examination. Finally, he superannuated with effect from 31.10.2011 as Incharge Head Clerk from the office of the Executive Engineer, Flood Control Division, Jhanjharpur.

Since despite vigorous efforts, the petitioner was not granted the benefit under the A.C.P. Scheme, he was



constrained to approach this Court by filing a writ petition vide C.W.J.C.No.13402 of 2013, which was finally disposed of on 13.08.2013 with a direction to the writ petitioner to file a fresh representation before the Principal Secretary, Water Resources Department, Govt. of Bihar raising his grievance for grant of benefit under the A.C.P Scheme. It was submitted by learned counsel for the petitioner that thereafter, the petitioner filed a detailed representation before the competent authority and finally by the impugned order i.e. Memo No.776 dated 19.05.2014 (Annexure-8 to the writ petition) the claim of the petitioner was rejected reiterating that the petitioner had not passed departmental Accounts Examination nor he was granted exemption from appearing in the said examination. The said impugned order has been assailed by the petitioner.

Learned counsel for the petitioner submits that for grant of benefit under the A.C.P. scheme, the requirement for passing the departmental examination is not mandatory. He submits that this issue has already been set at rest by number of decisions. He has specifically placed reliance on oral Judgment of this Court, reported in 2016(3) PLJR 945 ( Mahendra Baitha Vs. State of Bihar) and it has been argued by learned counsel for the petitioner that in Mahendra Baitha's case( supra), the issue has



already been settled and , as such, the decision of the Principal Secretary, Water Resources Department i.e. Annexure-8 is contrary to the Judgment/order of this Court and accordingly, the impugned order is liable to be set aside.

Learned State Counsel has vehemently opposed the prayer made in the writ petition. He reiterates that the petitioner has never passed the departmental Accounts Examination, which was essential for grant of benefit under the A.C.P. Scheme. He further submits that it is admitted case that the petitioner was not even exempted from appearing in the departmental examination by the competent authority and, as such, the impugned order has rightly been passed.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the claim for grant of benefit under the A.C.P. Scheme has been rejected mainly on the ground the petitioner has not passed departmental examination nor he was granted exemption from appearing in the departmental examination. Since this issue has already been set at rest by this Court, there is no reason to pass any other order. Learned State Counsel was not in a position to distinguish the case of the petitioner with the case of Mahendra Baitha's case (supra).



In view of facts and circumstances, particularly the fact that the issue has already been decided, there is no reason to allow the impugned order. Accordingly, the impugned order i.e. the order contained in Memo No.776 dated 19.05.2014 (Annexure-8) is hereby set aside with direction to examine the case of the petitioner and pass order for all consequential benefits to the petitioner. All the formalities must be completed within three months from the date of receipt/production of a copy of this order.

**(Rakesh Kumar, J)**

NKS/-

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